

NSPCC Policy Summary Children who are Asylum Seekers or Refugees

Objective

To ensure that the protection and welfare of asylum-seeking and refugee children is the same as that afforded to other children.

Children's Rights

Children are entitled to specific rights under a number of international instruments. The United Nations Convention on the Rights of the Child (UNCRC) is the most comprehensive of these instruments. Several articles specifically relate to the rights of the child to be protected from violence and exploitation, in particular:

- Article 6 – the right to maximum survival and development
- Article 8 – the right to identity
- Article 9 – the right to family unity
- Article 12 – the right to participate
- Article 19 - The right to protection from all forms of violence, injury, abuse, neglect or exploitation
- Articles 20 and 22 – the right to special assistance if the child is deprived of their family
- Article 32 - The right to be protected from economic exploitation
- Articles 34 & 35 – the right to protection from violence, abuse, exploitation, trafficking, etc
- Article 37 – the limitation of detention as a measure of last resort
- Article 39 - The duty of the government to take measures to ensure that child victims of armed conflict, torture, neglect or exploitation receive treatment for recovery and social integration

Key points

The NSPCC believes that refugee and asylum-seeking children are *children first* and *foremost*. The asylum process must not in any way compromise or militate against their proper care, protection and development.

The asylum system for separated children should be reviewed to that it is developed within a child rights framework.

The asylum-seeking process should enable each child to have the opportunity for their application to be heard without prejudice.

All staff who are involved in working with separated children should be trained in child protection and fully aware of the child-specific issues separated children face.

There should be child protection officers in every port or point of entry into the UK to identify and support victims of trafficking.

All separated children should have a thorough needs assessment to ensure that their health, emotional well-being and support needs are identified and met.

Separated Children

Separated children¹ who have temporary status or are illegally resident, are one of the most vulnerable groups in the UK. We use the term 'separated children' rather than 'unaccompanied asylum-seeking children' (UASC) because this term includes those who are accompanied by an adult who is not their parent, guardian or primary carer. This difference is particularly important when discussing the circumstances of children trafficked for commercial sexual exploitation or other exploitative purposes. Some children are accompanied, but not by a parent, guardian or customary care giver. Separated children seek asylum for a number of reasons including:

- fear of persecution
- lack of protection due to human rights violations
- armed conflict in their own country
- trafficking (for sexual, labour or other exploitation)
- escaping deprivation and poverty.

Claiming asylum

The asylum system is a complicated and ever-changing system. Separated children are struggling to cope with the circumstances that have led them to flee their country of origin as well as experiencing loss and grief for their families and homeland. Many children find the experience of claiming asylum confusing and frightening. There are a number of things that exacerbate the situation:

- The conditions in immigration screening centres are not child-friendly;
- There is a lack of understanding about the specific issues relating to separated children and child-specific forms of persecution;
- There is a culture of disbelief and a view that children are migrating for a better future rather than fleeing persecution;
- Children are not aware of their rights and often do not understand the system they are being subjected to;
- There is a lack of child-orientated literature;
- Children do not have independent support to assist them with making their claim;
- Children find it particularly hard to access quality legal advice.

Independent Guardian

The NSPCC recognises the need for all separated children to have access to an independent guardian who can provide emotional and practical support

¹ Separated children are children under 18 years of age who are outside their country of origin and separated from both parents or their previous legal/customary primary caregiver. Some children are totally alone while others may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments.

through the asylum screening process. All separated children should have an independent legal guardian appointed to act in their best interests and to support them through the process of assistance and protection. If children are not aware of their rights they may also not know or understand the significance of disclosing information during the asylum- seeking process.

The NSPCC considers that all separated children should be allocated an independent guardian.

Transition to adulthood

The transition from child to adult needs to be managed more effectively and there should be clear guidance about who is responsible for separated children as they become adults. Working agreements and protocols should be developed between local authorities and the National Asylum Support System (NASS) to prevent vulnerable children falling through the net.

Our services tell us of young people with families of their own who have no form of subsistence. They are relying totally on the support of the project. This makes this group of young people particularly vulnerable to disappearing and to other forms of exploitation.

Where young people have been granted discretionary leave to remain and they then make a further asylum application under adult procedures it is possible that NASS may take over responsibility for housing and financial support from the local authority. This means that vulnerable young people may be at risk of dispersal and required to move from the area in which they receive support and have become settled.

Returns

Being forced to return to the country they have fled has been one of biggest difficulties faced by separated children. The NSPCC has concerns about sending a person back to an environment that is unsafe and the impact that the process has on the young people. When considering the needs of separated children facing return to their country of origin, the best interests of the child must be the key consideration.

The UN Committee on the Rights of the Child has recently produced guidance on the treatment of unaccompanied and separated children outside their country of origin (2005). This guidance states that any decision on the return of a child must take into account the following:

- Safety, security and conditions - this encompasses the socio-economic conditions awaiting the child upon return;
- The availability of care arrangements for that particular child;
- The views of the child expressed in accordance with his or her right under article 12 of the UNCRC and those of the caregivers;
- The child's level of integration in the host country and the length of absence from the home country;
- The child's right to preserve his or her identity, including their nationality, name and family relations under Article 8 of the UNCRC;

- The desirability of continuity in a child's upbringing and their ethnic, religious, cultural and linguistic background.

The UNCRC states that a child should grow up in his/her family and should not be separated from his/her parents against their will, except when it is in the best interests of the child. It also states parents have primary responsibility for the upbringing and development of the child (Preamble, Articles 7,8,9,10,18, 27). The CRC also provides that in the case of separated children, States should trace the family for reunification purposes, and that children deprived of their family should be entitled to special protection and assistance (Articles 20 and 22).

Family reunification is one of the most important factors in favour of a child's return. If family reunification is not in the child's best interests, this is an important factor against a child's return. In cases where children may be sold in to trafficking by their families, return to the family environment is clearly not in the child's best interests.

Separated children should only be returned on a voluntary basis, following a risk assessment of their circumstances. If young people are voluntarily returned after the age of 18 to their country of origin this should be part of a managed return programme. There must be an obligation to help them to prepare for independent living in the society and culture to which they are returning, with recognition that they are vulnerable and must be appropriately consulted on how best to ensure that they are effectively reintegrated.

Special consideration should be shown to trafficked children, as they are often rejected by their family and community, especially in cases of trafficking for sexual exploitation, because they are frequently re-trafficked. The evidence from the NSPCC's Bfree/Streetmatters service highlights these kinds of problems, as children who have been trafficked here face an unsympathetic and punitive asylum process. The service has a number of young victims of trafficking who did not claim asylum for trafficking upon their immediate arrival (they may not have identified themselves as having been trafficked or may not have understood what had happened to them or used the word 'trafficking'). This has complicated their applications for indefinite leave, and diluted the support available to them. These children are particularly vulnerable and in need of international protection.

The NSPCC considers that separated children should only be returned to their country of origin on a voluntary basis after a full risk assessment has been carried out.

The NSPCC considers that the UK asylum process should recognise child trafficking as a cause of persecution on the child's return, and trafficked children should be seen as a distinct group.

The NSPCC urges that trafficked children should have the automatic right to remain.

Age determination

Many young people arrive in the country with little or no identification on them. An age assessment then has to be carried out. The duty is placed on the child to prove that they are a child or they will be dealt with in the adult system.

Disputes over age arise for various reasons:

- a) Not all countries and cultures attach the same importance to chronological age, and birth records are afforded less importance.
- b) Recording conventions and calendars are different in other countries and may not be easily reconciled with UK systems.
- c) Adults may wish to avail themselves of asylum processes and support arrangements made for children, as these are perceived to be more favourable.
- d) With other children there may be a need to assess their age for protection or care reasons. For example, traffickers may present young people as older or younger in order to avoid immigration controls or social services checks

We have a number of concerns about age assessments. Biometric age assessments are intrusive and do not lead to an accurate assessment of age. We are concerned that medical practitioners are being asked to undertake age assessments when this is not their role. The Royal College of Paediatrics and Child Health (RCPCH) considers that age determination is an inexact science, and that estimates of a child's physical age from x-rays of his or her dental development are capable of producing only a four-year age range for 95 per cent of the population.

Children who have experienced trauma or persecution, have been separated from their families and their community, and have then managed to make their way to the UK, will often appear much older than they are just because of all they have been through. It is sensible to take an approach where someone claiming to be less than 18 should be given the 'benefit of the doubt'.

The impact of an inaccurate age assessment can be devastating. If children are wrongly assessed as being over 18 they will be processed through the system as adults and will not have their safeguarding needs considered. They could potentially be detained in an Immigration Removal Centre as part of the fast-track process. One example can be seen in the stories of two boys in contact with one of our Young People's Centres. The boys had their age disputed for more than a year. One of these boys was placed in National Asylum Support Service (NASS) accommodation. He was a vulnerable child, yet he was placed in unsupported accommodation with adults. Neither of the boys was able to receive support from the local authority and as such their safeguarding and emotional wellbeing needs were not met.

The NSPCC recommends that in all age-disputed cases the benefit of the doubt should be given to the child.

The NSPCC considers that in age-disputed cases time should be taken to ensure a thorough assessment is made and the processing of asylum claims should be delayed until the age dispute has been resolved.

Access to legal advice

Changes in the way that legal advice is funded have a disproportionate impact on separated children. The complexity of processing a child's application and the need to go at a pace slow enough to ensure that the child is able to understand the process makes it increasingly difficult to do this properly.

The NSPCC considers that all children should have access to fully funded legal advice. The amount of time they have with a solicitor should be determined by individual need rather than pre-determined quotas.

Access to support services

There is no clear guidance about what services separated children are entitled to from their local authority. Areas that have a port or point of entrance into the UK can have the demographics of the local community of children looked after completely changed over a short period of time.

There are two key considerations. While there is the opportunity for expertise to be developed to meet the needs of these young people there is an essential need for additional resources so that young people are not scattered and they can access help locally. This has been an issue for children and young people accessing our Time Out service in Solihull. Obtaining access to medical help, counselling and education has proved difficult. As a result children often receive sub-standard support.

Our practice experience demonstrates clearly that separated children need to be placed where services exist. Practitioners report high levels of vulnerability experienced by separated children, in particular the feelings of isolation and cultural dislocation they experience. The separated children and young people who access NSPCC services are traumatised and in need of therapeutic support to enable them to recover from their experiences. For example, a 17-year-old boy fled to the UK from Pakistan after his mother was murdered by family members. The uncertainty of his future, his fear of being sent home to a family he fears, and his grief for and loss of his mother and his former life in his homeland, have all contributed to him having suicidal thoughts. All the support provided by the service is now focused on preventing him from committing suicide. Many young people experiencing similar feelings do not have access to such help and support.

All separated children should receive a proper assessment of need using the *Framework for the assessment of children in need and their families* and should be accommodated under Section 20 of the Children Act 1989.

The NSPCC considers that there should be a national infrastructure of therapeutic services so that every separated child has access to the help they require to overcome their traumatic experiences

The NSPCC considers that there should be a national safeguarding strategy for separated children with clear guidance for Children's Trusts.

Child Trafficking Guidance

The NSPCC is concerned that currently there is no clear and comprehensive guidance for social services to identify trafficked children and to act to protect them. We would like to see a national strategy developed for a multi-agency approach from a child protection perspective. This would put in place multi-agency training programmes and ensure awareness, understanding and clear guidance on child trafficking issues across sectors including immigration services under the Immigration and nationality Directorate (IND), social services, Local Safeguarding Children Boards, teachers and medical professionals. The NSPCC would also like to see multi-agency teams in place at ports of entry in order to identify concerns about trafficking, investigate and take measures to protect children.

The NSPCC considers that multi-agency teams with child protection staff should be placed at all ports of entry in order to identify concerns about trafficking.

The NSPCC considers that there should be a national safeguarding strategy for trafficked children with clear guidance for Children's Trusts.

Accommodation

The lack of clarity about what support separated children are entitled to from the local authority means that some of the most vulnerable children in our society are not receiving the protection they require. A recent report by Lay et al (2007) from the Middlesex University Research Centre for Transcultural Studies in Health and the Ethiopian Community Centre in the UK highlighted that many separated children are housed in adult bed and breakfast accommodation, without support. There are specific child safety risks in placing unaccompanied refugee children in accommodation with adults including asylum seeking adults, particularly since it is unlikely that there would be records of adults' previous criminality (including sex offences) or mental ill health.

Many other separated children are living semi-independently after the age of 16, and this is often an unsafe option. A significant proportion of these young people will have been sexually abused, assaulted or raped (Lay et al 2007). This leaves these children without appropriate care and support and increasingly vulnerable to disappearing and to exploitation.

The experiences of the Street Matters/Bfree service over the past four years has been that even when young people who have been trafficked are accorded Social Services Support under s.20 of the Children Act 1989² this support is minimal. Support typically consists of low quality semi-independent accommodation where the young people have very little contact with the

² See also The Children (NI) Order 1995 for NI equivalences to Children Act 1989.

Social Worker. Most of the young women known to the Street Matters/Bfree service have been placed in this kind of semi-independent accommodation as soon as they are 16. These placements have proved inadequate for these young people who have experienced trauma and abuse and who often do not have sufficient English- language skills or understanding of how things work to cope in semi-independent living.

There is a clear sense from our practitioners that in many cases fostering would be the most appropriate form of care for trafficked children, as they have high levels of vulnerability and need. However, this is rarely an option available to trafficked children. Where it is provided our practitioners state that foster placements are not working in many cases, as foster carers are not sufficiently trained to work with and support separated children who have been through the traumas associated with asylum. The service also reports that there is insufficient expertise, care and attention from front-line social workers for children who have been the victims of trafficking.

The NSPCC considers that there should be guidance and minimum standards set down to ensure that all separated children have their support needs met and accommodated in safety.

Dispersal

Dispersing children should only ever be considered if it is in the best interests of the child. Separated children struggle to gain access to the relevant services in areas where there are established asylum-seeking communities and experience in the local authority of working with separated children. Moving children to other areas in the country where there are fewer services will lead to children not receiving the services they need. The NSPCC considers that dispersal decisions should not be about the ability of local authorities to cope, but about safeguarding and promoting the welfare of children.

The NSPCC considers that children should not be subject to dispersal unless it is in their best interests.

Detention

The NSPCC is opposed to the detention of children in immigration facilities. Locking children up is completely unacceptable and an infringement of their rights. In our view it cannot be justified by what is in effect an administrative need to process asylum claims quickly. Viable alternatives need to be found to stop the detention of all asylum- seeking children. Locking children up with adults places them at risk and is a clear child protection issue.

The NSPCC considers that children should not be detained in immigration facilities.

Access to health services

Asylum seekers face problems with poor access to health care, including assessment procedures, lack of familiarity with NHS systems and difficulties in registering with GPs.

Asylum-seeking and refugee children, in particular those children who have experienced torture, political violence and other forms of persecution, have specific developmental and mental health needs that must be fully catered for in all aspects of the asylum process and support arrangements, if they are to participate fully in society.

Access to legal advice

Changes in the way that legal advice is funded have a disproportionate impact on separated children. The complexity of processing a child's application and the need to go at a pace slow enough to ensure that the child is able to understand the process makes it increasingly difficult to do this properly.

The NSPCC considers that all children should have access to fully funded legal advice. The amount of time they get with a solicitor should be determined by individual need rather than a pre-determined quota.

Recommendations

- The NSPCC considers that the asylum system should be reviewed to ensure a child rights approach so that separated children are given the help and support they need to make their application and recover from the trauma that they have experienced.
- The NSPCC recognises the need for all separated children to have access to an independent guardian who can provide emotional and practical support through the asylum screening process.
- Asylum seeking children should be afforded the same rights and protection as other children. The relevant sections of the Children Act should be extended to cover UK BA staff so that there is a statutory duty to safeguard asylum seeking children and promote their welfare
- A specialist support system is needed, including better access to culturally sensitive counselling services, especially for those children who may experienced torture, political violence and other forms of persecution.
- The Government should ensure refugees receive the same level of income support as other families.
- The NSPCC considers that the UK Government must demonstrate its commitment to protecting children from harm by abolishing its reservation on article 22 the UN Convention on the Rights of the Child.

Related policy summaries

Trafficked children

Supporting documents/ research

Lay M, Papadopoulos R, Gebrehiwot A (2007) *SAFER UK: Preventing sexual maltreatment of unaccompanied asylum-seeking minors and improving services for them*. Middlesex University, London.

NSPCC Submission to Independent Asylum Commission Review, November 2007

NSPCC Submission to the UKBA Consultation on the Code of Practice to Keep Children Safe from Harm, April 2008

NSPCC Submission to the Government Consultation Planning Better Outcomes for Unaccompanied Young people, May 2007

NSPCC Response to White Paper – *Secure Borders, Safe Haven – Integration with Diversity in Modern Britain*, March 2002.

NSPCC Submission to the Victoria Climbié Inquiry, *Discovery and Inclusion*, February 2002.

Save The Children, *Young Refugees – a guide to the rights and entitlements of separated refugee children*, July 2005

Save the Children, *No Place for a Child – Children in UK immigration detention: Impacts, alternatives and safeguards*, 2005

The Children's Society (2008), *On The Edge of Despair*, 2008

The Children (NI) Order 1995 for NI equivalences to Children Act 1989.

UNCRC (2005) Guidance on the treatment of unaccompanied and separated children outside their country of origin.

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